In the High Court of Judicature at Madras

Dated :- 30.8.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

W.A.No.2658 of 2004

Meenakshi Sundaram ... Appellant

Vs.
The District Forest Officer
Authorised Officer
Coimbatore. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 24.8.2001 made in W.P.No.12660 of 2001.

For Appellant :- Mr.K.Selvaraj
For Respondents:- Mr.S.Rajasekar,AGP

JUDGMENT
(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)
Aggrieved against the order dated 24.8.2001 made in W.P.No.12660 of 2001, the appellant filed the present writ appeal under clause 15 of the Letters Patent. The appellant filed writ petition under Article 226 of the Constitution of India and sought for the relief of quashing the order of the respondent District Forest Officer, Authorised Officer, Coimbatore dated 8.3.1997 whereby the lorry of the appellant was ordered to be confiscated for involving in the forest office, and the confirmation order of the II Additional Sessions Court, Coimbatore dated 5.1.2000 in C.A.No.55 of 1997.
2. It is the case of the appellant that he is the owner of the lorry bearing Registration No.TNS 9942. The vehicle was taken by his driver Palanisamy and cleaner Murugan for transportation of Mosaic chips and powder to Kerala. The driver and the cleaner transported sandal wood illicitly from Ariyaloor without the knowledge of the appellant. When the vehicle was intercepted by the respondent at Madukkarai near Coimbatore on a regular vehicle check found that the vehicle was transporting 314 kgs of sandal wood along with other goods without any valid permit. The sandal wood being a scheduled timber cannot be transported without the required permit under the forest Act, the respondent seized the vehicle along with the goods on 1.4.1995. The respondent arrested the driver and cleaner and obtained a statement from them. The appellant appeared before the respondent and gave a statement to the effect that the illicit transportation of sandal wood was done by the driver without the knowledge of the appellant and prayed for the release of the vehicle. However, the respondent by his order dated 8.3.1997 passed an order of confiscation. The appellant preferred a Criminal Appeal in C.A.No.55 of 1997 on the file of the II Additional Sessions Judge, Coimbatore, who by his order dated 5.1.2000 confirmed the order of the respondent. On that basis, the appellant filed writ petition and sought for quashing of the order of confiscation on the ground that under Section 49B(2) of the Tamil Nadu Forest Act, no order of confiscation could be made if the owner thereof proves to the satisfaction of the authorised officer that the vehicle was used in

transportation of sandal wood without his knowledge or connivance. The learned judge dismissed the writ petition appreciating the case of the appellant in proper perspective. Hence the appeal.

3. The learned counsel for the appellant placing reliance on the Full Bench Judgment of the Andha Pradesh High Court in the case of SUB-DIVISIONAL FOREST OFFICER, CHENNUR VS. VIJAY B.LGULATI AND OTHERS reported in 1997(6) ANDHRA LAW TIMES 238, contended that the confiscation of the vehicle used in the commission of forest offence can be ordered only if the owner connived or had knowledge of unlawful use or if the culpability of his agent or driver is shared by him. The confiscation of the vehicle for offence committed by an agent or driver without the knowledge of the owner amounts to arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

4. We heard the argument of the learned counsel on either side and perused the materials on record.
5. As per Section 49(B)(2) of the Tamil Nadu Forest Act, no order of confiscation of vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that the vehicle was used in carrying on the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in-charge of the vehicle in committing office and each of them had taken all reasonable and necessary precaution against such use.

6. The statutory requirement has been amplified in the Full Bench decision of the Andha Pradesh High Court. The burden of proof under the Section is upon the owner of the vehicle to prove to the satisfaction of the authorised officer that the vehicle was used in carrying the illicit transportation of the timber without his knowledge or connivance.

7. In the order made in the writ petition, the reasoning given to non-suit the appellant for the relief sought for was that the learned Additional Sessions Judge, Coimbatore has concluded that the appellant did not place any material before the Court in support of his contention that the vehicle was meant for the use of a different purpose and that the driver and the cleaner misused the same without his knowledge. If really the contention of the appellant that the vehicle was primarily used for transportation of mosaic chips to Kerala, the burden was upon the appellant to prove the said factor before the respondent as well as the lower appellate Court. As rightly held by the Courts below, no material was placed before the Courts in support of the stand of the appellant. Even before us, except over emphasizing that a statement was given by the appellant to the effect that the driver and the cleaner without the knowledge of the appellant have involved the vehicle in the illegal transportation of sandal wood, nothing was placed or pointed out to contend that the appellant discharged the onus cast upon him under the provisions of the Act to the satisfaction of the authorities that the vehicle was used without his knowledge by his driver and cleaner for illicit purpose. We are afraid to accept that the mere statement of the appellant that the vehicle has been used in the illicit transportation by the driver and cleaner can be regarded as proving to the satisfaction of the authority of the appellant's innocence. No material, what so ever, even to prove the transportation of Mosaic chips and power to Kerala has been placed before any of the authorities below. When the vehicle was transporting Mosaic chips to Kerala from Salem/Sangeri, what is the necessity for the vehicle to come over nearer to Ariyalur Check post and upload 314 kgs of sandal wood from Ariyalur and transport the same to Kerala via Madukkarai where the vehicle was seized. In the absence of any evidence or a minimum evidence to support the story of the appellant, mere reliance on the ratio laid down in a particular provision of the Act cannot be made applicable to all the cases, regardless of the facts and circumstances of each case. If the contention of the appellant that the statement given by the appellant before the authority that he has no culpability in the given transaction is accepted as a strong case to relieve the appellant, that would be the mockery of the statutory provision, as it would be the tendency of the owner to always to say that the vehicle is used by the driver without his knowledge. That is not the requirement of the statutory provision. Hence,

we find no reason to interfere with the order passed by the learned Single Judge and the appeal is dismissed. No costs.

(K.R.P.,J.) (C.V.,J.)
30.08.2007
Index:Yes
Internet:Yes
To
The District Forest Officer
Authorised Officer
Coimbatore.

K.RAVIRAJA PANDIAN,J.
AND
CHITRA VENKATARAMAN,J.

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